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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,902	09/23/2004	Touichirou Takai	02410293US	7846
7055 7590 07/11/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER ROSENBERGER, RICHARD A	
			ART UNIT 2877	PAPER NUMBER
			NOTIFICATION DATE 07/11/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/508,902

Applicant(s)

TAKAI ET AL.

Examiner

Richard A. Rosenberger

Art Unit

2877

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-6 and 9-20.
Claim(s) objected to: _____.
Claim(s) rejected: 7-8.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

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1. The final rejection was prepared in March 2007. On 12 April 2007 a memo was issued by the Office changing the Office's interpretation of 35 USC 101 and the manner in which the Examiner's were being instructed to treat method claims under 35 USC 101. Because of the change in Office policy as set forth in that memo, the rejection under 35 USC 101 of claims 1-6 is withdrawn. The withdrawal of this rejection is because of the change in Office policy, not because of any argument made in the remarks or because of any alleged deficiency of the rejection, which was proper under the procedures and policy of the Office at the time the rejection was made.

2. The rejection under 35 USC 112, second paragraph, of claim 7 has been overcome by the amendment to claim 7 filed 22 June 2007.

3. The remarks relative to the art rejection of claims 7 and 8 over the Hiroi et al reference have been considered, but are not persuasive. The remarks ignore the teachings of the reference as well as the language of the rejected claims. The final rejection, in referring to the Hiroi et al reference, refers to the illumination light as being directed vertically and the material body being moved horizontally, which is a reasonable and accurate manner of referring to the instrument shown in figure 4 of the reference. The remarks suggest that there the words "vertical" and "horizontal" do not appear in the written disclosure of the reference in reference to the light beam or movement of the material object. This ignores, of course, the drawing figures itself, which is, applicants apparent belief notwithstanding, part of the original disclosure. It ignores the fact that those of ordinary skill in the art will not read the reference as a

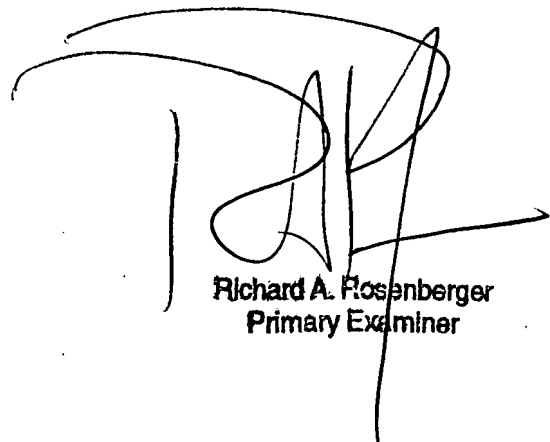
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vacuum, forgetting all they known about the art and the real world; the Office may not assume that the ordinary worrkd in the art is stupid (*In re Sovish, Moisson, and Selleslags* (CA FC) 226 USPQ 771 (1985)), It also ignores the fact that the final rejection used the terms to refer to the elements of the drawings as explanatory aids to help identify the elements and relationships in the system of the reference. Most glaringly, it ignores the claim language, which does not require that the light beam be vertical, nor that the movement be horizontal, but requires only that the light beam be directed "in a first direction" and the movement be "in a direction transverse to the first direction"; if the system of figure 4 of the reference were turned sideways, or upside down, it would still meet the language of the claim.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
5 July 2007



Richard A. Rosenberger
Primary Examiner